

# WORK IN PROGRESS

## E&SC PROGRAM OUTLINE

August 1, 2006

*This program outline is a work-in-progress discussion draft based upon the feedback received at the July 11, 2006 E&SC Working Group meeting.*

### Process Overview

1. **Notice of Intent (NOI)/Stormwater Pollution Prevention Program (SWPPP) Preparation and Submittal.** Developer submits NOI to NRD (on behalf of City) and NDEQ, and is issued a permit number by each. NOI includes Stormwater Pollution Prevention Plan (SWPPP) for overall development and mini-SWPPP template/requirements for individual building lots. SWPPP to be prepared by a PE, registered architect or certified E&SC professional who has attended a City certification course. Mini-SWPPP identifies general E&SC requirements for individual lots; which best management practices (BMPs) will be used and where they will be placed relative to site drainage, streets, etc.; and maintenance and inspection requirements. A sample "plot plan" that illustrates lot drainage and BMP placement must be included.

#### **Changes from present program:**

- **Developer must include mini-SWPPP template for small sites with the NOI submittal.**
- **Fee for SWPPP**

2. **Authorization of Land Disturbance.** NDEQ authorizes work to proceed on site. BMPs must be installed prior to land disturbance. E&SC Plans are to be updated when lots are sold and/or changes to the plan occur, until the development is 95% stabilized with permanent vegetation. Inspections are required (by the developer or their agent) every 7 days or after each rain event of ½ inch or more, and inspection documentation must be maintained on site. The City and NRD have the option to review and/or perform oversight at any time.

#### **Changes from present program:**

- **Current State regulation requires inspections at least once each month or after a ½-inch or greater rainfall. NDEQ proposed updating its NPDES Construction site permit inspection requirement to every 7 days.**

3. **Submittal of Plat to City.** (This may happen before or concurrently with items 1 and 2). Subdivider agrees to take responsibility for both the SWPPP and the mini-SWPPP for small sites. BMPs must be in place for the City to certify the site grading and issue executive orders for public improvements.

#### **Changes from present program:**

- **Subdivider agrees to take responsibility for both SWPPP and mini-SWPPP for small sites.**

# WORK IN PROGRESS

4. **Sale of Lots and Transfer of SWPPP Responsibility.** Developer sells lots and includes language in sales agreement signed by builder that builder will assume duty and responsibility for E&SC measures. Lots must be stabilized at time of sale to the builder. E&SC measures must be installed if site is not permanently stabilized (with permanent vegetation). Builder completes mini-SWPPP and plot plan for their lot(s) using the template provided by the developer (from NOI), and provides it to developer and B&S with building permit application. Builder is responsible for keeping sediment out of public right-of-way (ROW) and/or waterbodies *once building permit is issued*. Developer enforces mini-SWPPP performance and compliance based on conditions of purchase contract. The City and NRD oversee and enforce developer compliance, and reserve option to oversee and enforce builder compliance *if the developer does not*.

**Changes from the present program:**

- **Builder provides developer and B&S with copy of mini-SWPPP and plot plan, referencing original permit numbers from the developer's NOI.**
- **B&S reviews the plot plan as a condition of permit issuance.**
- **Copy is maintained on the building site. Developer or its agent oversees builder compliance.**

5. **Closeout of Mini-SWPPP.** Lots must be stabilized at time of sale to homeowner or E&SC measures installed. If site is not permanently stabilized, occupant is responsible for keeping sediment out of the public ROW. Builder submits notice of completion to developer and B&S, and developer or its agent certifies that site is stabilized and closes out Mini-SWPPP for that lot. City oversees and enforces developer compliance, and retains option to deny a certificate of occupancy if site is not permanently stabilized.

**Changes from the present program:**

- **Close out of Mini-SWPPPs is required to demonstrate 95% stabilization of development site.**

# WORK IN PROGRESS

## **Enforcement**

Under the draft plan, the City will oversee developer performance and will enforce developer compliance with all E&SC requirements within the development. The developer will enforce builder compliance on individual lots. City enforcement could include some or all of the following measures.

1. **Enforcement of violations during land development phase.** If there is an erosion or sediment problem on the development site, the City takes enforcement action against the developer.
  - Initial Notice of Violation, issued by the E&SC inspector, with requirement to correct within 7 working days.
  - If not corrected in 7 working days, consequences include:
    - 1) Stop Work Order issued by E&SC inspector (no further land disturbance beyond what is needed to get site into compliance).
    - 2) Hold E.O.s for improvements until problem corrected.
    - 3) Fine up to \$500 per day for each day of the offense, issued by the E&SC inspector.
  - Stop Work for repeat violations may result in revoking the NOI.

### **Changes:**

- **Issuance of Notice of Violation for general violations**
  - **Increase in fine from \$100/day to \$500/day.**
  - **Clarification of Stop Work authority**
  - **Potential to revoke NOI permit**
2. **Enforcement of violations during building phase on small sites.** Developer retains legal responsibility for SWPPP. Builder agrees to the terms of the Mini-SWPPP. The developer enforces the terms of the Sales Agreement with the builder. City takes enforcement action against developer, if not in compliance.
    - Notice of Violation, issued by the E&SC inspector to the developer to correct within 5 working days.

If not corrected in 5 working days, consequences include:

      - 1) Stop Work Order issued by the E&SC inspector (no further land disturbance beyond what is needed to get site into compliance).
      - 2) Fine up to \$500 per day for each day of the offense, issued by the E&SC inspector.
    - The City retains authority to suspend or revoke building permits and refuse building inspections for lots if developer action against the builder is not effective.
    - Stop Work for repeat violations and lack of developer enforcement may result in revoking the NOI.

### **Changes:**

- **Developer retains legal responsibility for small sites.**
- **Issuance of Notice of Violation for specific site violations.**
- **Increase in fine from \$100/day to \$500/day.**
- **Clarification of Stop Work authority.**
- **Building inspectors to notify City/NRD staff if measures not in place**
- **Withhold Building & Safety permits and inspections**

# WORK IN PROGRESS

## Ordinance Revisions

The City of Lincoln must revise its ordinances to enact the Draft Program and other E&SC program provisions. The following ordinance conditions are anticipated to be included with the development of a consolidated code.

1. **Stormwater Quality Chapter.** All E&SC control ordinances are consolidated under one new Lincoln Municipal Code “Water Quality” chapter. Current references (as they may be revised for consistency) remain and reference the Water Quality chapter. Note: The Water Quality chapter will also accommodate illicit discharges to storm drain, etc. required by state and federal regulations.
2. **State/Federal Terminology.** Revise terminology to match state/federal standards (e.g., reference SWPPPs, NOIs, inspection/documentation requirements etc).
3. **Subdivision Ordinance/Agreement.** Subdivider agrees to take responsibility for both SWPPP and mini-SWPPP for small sites.
4. **Builder Responsibility for Individual Lots.** Add language to building code indicating that the builder will assume the duty and responsibility for the mini-SWPPP approved as part of the subdivision as it relates to their lot at time of building permit issuance (City must retain ability to take direct action against the owner/builder).

Note: City Law is in the process of reviewing and providing recommendations for needed code revisions.